

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 330 of 1984

WITH

CIVIL REVISION APPLICATION No. 821 of 1983

WITH

SPECIAL CIVIL APPLICATION No. 4517 of 1982

FOR APPROVAL & SIGNATURE:

Hon'ble Mr.Justice D.G.Karia

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1. Whether Reporters of Local Papers may be allowed to see the judgments?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANANTRAI MULSHANKAR TRIVEDI

VERSUS

STATE OF GUJARAT & OTHERS.

Appearance:

AO No.330 of 1984:

MR.JA SHELAT Learned Advocate for Appellant.

RESPONDENTS NOS.1 TO 4 SERVED.

CRA No.821 of 1983:

MR.SN SHELAT Learned Advocate for Petitioner.

MR.JA SHELAT Learned Advocate for Respondents Nos.1 to 5 is absent.

SCA No.4517 of 1982:

MR.SN SHELAT Learned Advocate for Petitioner.

MR.PM RAVAL, Learned Advocate for Respondent No.3.

RESPONDENT Nos. 1 & 2 SERVED.

RESPONDENTS Nos.4 & 5 SERVED.

CORAM: MR.JUSTICE D.G.KARIA

Date of Order: 26.9.1996

ORAL JUDGMENT

The question of law with regard to jurisdiction of Civil Court in respect of deciding disputes between the Manager of College and College employee, which is connected with the conditions of service of such college employee, is involved in common in all these three matters. These matters are therefore, ordered to be heard together. Accordingly, they are being disposed off by this common judgment.

2. Special Civil Application No.4517 of 1982 is filed by Bhavnagar University through its Registrar, seeking an appropriate writ in the nature of certiorari or any other writ, order or direction to set aside the order dated September 16, 1982, passed by the Labour Court in Recovery Application No.1297 of 1980 and further for directing the Labour Court, Rajkot for transferring the said Recovery Applications Nos. 1297 of 1980 to 1301 of 1980 to the Tribunal constituted under the Gujarat Affiliated Colleges Services Tribunal Act, 1982. By the impugned order in the said Recovery Application, the learned Presiding Officer of Labour Court, Rajkot held that the respondent-employees were the employees of the University and not of the college and as such the Labour Court has jurisdiction to proceed with the proceedings under section 33(c)(ii) of the Industrial Disputes Act, for determining the disputes of the employees in respect of the work done by them as Laboratory Assistants. The said order of the Labour Court, Rajkot is under challenge.

3. The abovenamed petitioner i.e. Bhavnagar University is also the petitioner in Civil Revision Application No.821 of 1983 who is challenging the order dated 25th January, 1983 passed by the learned Civil Judge (Senior Division), Bhavnagar below application ex.44 in Regular Civil Suit No.841 of 1981, holding interalia that the Civil Court has jurisdiction to try the suit filed by the respondents-employees who were the Laboratory Assistants of Sir P.P.Institute of Science, Bhavnagar, challenging the seniority list. The Bhavnagar University resisted the said suit on the ground that the Civil Court has no jurisdiction to decide the suit in view of the Gujarat Affiliated Colleges Services Tribunal Act, 1982 when the subject matter in dispute fall within the jurisdiction of the Tribunal constituted under the said Act. The University therefore, gave application ex.44 contending interalia that the Civil Court would not have jurisdiction in view of the constitution of the Tribunal as aforesaid. The learned Civil Judge(Senior

Division) dismissed the said application ex.44 holding that the Civil Court has jurisdiction. Hence, the Civil Revision Application.

4. In Appeal From Order No.330 of 1984, the order dated 20th December, 1983 passed by the 2nd Jt. Civil Judge(SD), Bhavnagar below application ex.44 is challenged. By the impugned order, the learned Civil Judge held that the disputes between the parties were related to the service conditions of the appellant-plaintiff as the Tutor who claims the basic salary of Rs.325/- on the promotional increment w.e.f. 1st April, 1966 and the arrears to the tune of Rs.20,000/-. The learned Civil Judge ordered to return the plaint for proper presentation of it to the Tribunal constituted under the Gujarat Affiliated Colleges Services Tribunal Act, 1982, holding that the Civil Court has no jurisdiction.

5. Thus, it is evident that question that is arisen in the three matters is with regard to the jurisdiction of Civil Court vis-a-vis the Tribunal constituted under the Gujarat Affiliated Colleges Services Tribunal Act, 1982 in respect of the matters concerning the service conditions of the college employees.

6. The Gujarat Affiliated Colleges Services Tribunal Act, 1982 has been enacted to provide for constitution of a Tribunal for the purpose of determining the disputes relating to conditions of service of the members of the teaching, other academic and non-teaching staff of the affiliated colleges in the State of Gujarat, for procedure for imposition of penalty on any such member and for matters connected therewith. Section-2(a) of the said Act defines affiliated college as under:

"affiliated college" means a college affiliated to a university under a relevant University Act."

Clause 2(c) of the Act further defines "college" as,

" college" means an affiliated college."

As per Section 2(d):

" college employee" means any member of the teaching, other academic and non-teaching staff of a college(whether confirmed or temporary or on probation) in the service of such college and for the purpose of any proceeding under this Act

in relation to a dispute referred to in section 8, includes any such member who has been dismissed, or removed or declared surplus on account of the introduction of the system of higher secondary education or whose services are otherwise terminated."

The definition of "relevant university" may also be relevant in view of the question involved in these three matters. The relevant university in relation to college means the university to which such college is affiliated.

7. Pursuant to section 3(1) of the said Act, the Gujarat Affiliated Colleges Services Tribunal has been constituted. Section-7 of the said Act of 1982 provides about the jurisdiction of the Tribunal. The Tribunal shall have jurisdiction to entertain and decide disputes referred to in section 8, all suits and proceedings transferred to it under sub-section (2) of section 13 and appeals made under sub-section (6) of section 14. Section 8 of the Act contemplates that where any dispute between the Manager of a college and, any college employee, which is connected with the conditions of service of such college employee, the manager, as the case may be, the college employee may make an application to the Tribunal for the decision of the dispute.

8. Section-13 of the said Act, 1982 is relevant which is about bar of the jurisdiction of the Civil Court. It provides that:

"No Civil Court has jurisdiction to settle, decide or deal with any question which is by or under the Act required to be settled, decided or dealt with by the Tribunal."

Sub-section 2 of Section 13 further provides that:

" all the suits and proceedings between the Manager and college employee relating to the dispute connected with the conditions of service of such college employee which are pending in any Civil Court on the appointed day shall be transferred to and continued before the Tribunal."

Sub-section 2 of Section 13 further provides that:

"provided that nothing in this sub-section shall apply to execution, proceedings and appeals arising out of decrees or orders passed by any

such court before the appointed day and such execution, proceedings and appeals shall be decided and disposed of as if this Act has not been enacted."

9. In view of the above scheme of Gujarat Affiliated Colleges Services Tribunal Act, 1982, it is evident that the Civil Court will have no jurisdiction to determine any question which is required to be settled or decided or dealt with by the Tribunal.

10. In the above Special Civil Application, the order of the learned Presiding Officer of the Labour Court, Rajkot is under challenge. The learned Presiding Officer has held that the respondent-employees though they were peons, the work of Laboratory Assistants has been taken from them and the question was whether they were entitled to Rs.30/- p.m. for the extra work. The learned Labour Judge held that the employees were of the university and not of the college and as such Affiliated Colleges Services Tribunal Act would not be applicable. In this connection, the Govt. of Gujarat has issued resolution way back on 29th May, 1968 directing the three colleges; (i) Shamaldas Arts College, Bhavnagar; (ii) Sir P.P. Institute of Science, Bhavnagar (respondents are the employees of Sir P.P. Institute of Science, Bhavnagar) and; (iii) M.J. College of Commerce, Bhavnagar to be transferred to the Saurashtra University, with immediate effect subject to the terms and conditions specified therein. The terms and conditions of the transfer inter alia provide that the status of the college should be that of the affiliated colleges. This is as per condition no.4 of the terms and conditions of the said resolution. Clause 6 of the said terms and conditions further provides that university may prepare scheme of development of these colleges and get them approved by the government. Thus, by the said resolution it has been expressly provided that the colleges transferred to the Saurashtra University would continue to have the status of affiliated colleges. It is not in dispute that these colleges including Sir P.P. Institute of Science, Bhavnagar, wherein the respondents are working, continue to be affiliated colleges. Under the provisions of Section 69(5) of the Bhavnagar University Act, the management was transferred to the Bhavnagar University, however, the colleges did not lose the status of the affiliated college, the management being in the hands of the university. The notifications have been issued from time to time by the State Government under the provisions of the Saurashtra University Act and the Bhavnagar University Act for continuance of affiliation in respect of various subjects under section 35 of the Bhavnagar

University Act. In view of the above matter, and the notifications issued from time to time by the State Government, it cannot be concluded that the employees of these colleges can be said to be belonging to the university and not the college.

11. By Section 18 of the Gujarat University Services Tribunal Act, 1983, the University Acts including the Saurashtra University Act, 1965 and the Bhavnagar University Act, 1978 came to be amended in the manner and to the extent specified in column 2 of the Schedule appended to the Act with effect and from the date on which Tribunal is constituted under section 3 of the Act. Accordingly, Section 53 of the Saurashtra University Act, 1965 and Section 58 of the Bhavnagar University Act, 1978 have been deleted. Accordingly, the provisions with regard to the constitution of the Tribunal of Arbitration under section 58 of the Bhavnagar University Act, 1978 stood repealed.

12. In the above view of the position, this Special Civil Application deserves to be allowed.

13. Similarly, the impugned order below ex.44 is on the basis that the plaintiff-respondents, as Laboratory Assistants in Sir P.P. Institute of Science, Bhavnagar, were the employees of the university and not of college. Therefore, the aforesaid reasonings and findings as of Special Civil Application will have application for disposal of the Civil Revision Application. This Civil Revision Application of Bhavnagar University thus, deserves to be allowed.

14. In Civil Misc. Appeal No.7 of 1984, the appellant-original plaintiff was ordered to be handed over the plaint of his Special Civil Suit No.125 of 1978 filed in the Court of 2nd Jt. Civil Judge(S.D.), Bhavnagar, for the proper presentation to the Tribunal, constituted under the Gujarat Affiliated Colleges Services Tribunal Act, 1982, holding that the Civil Court had no jurisdiction to entertain the suit in respect of the service conditions of the college employees i.e. the plaintiff-appellant. The plaintiff filed the suit against the Principal among others claiming difference of pay on the increment etc. Therefore, the suit related to the service conditions of the college employees. The learned Civil Judge has rightly granted application ex.45, whereby the learned Civil Judge held that the Civil Court had no jurisdiction to entertain the suit under section 13 of the Act. The legality and validity of the impugned order has not been successfully

challenged. In view of the reasons and findings in the above Civil Revision Application and Special Civil Application, the Appeal From Order is liable to be dismissed.

15. In S.C.A. No. 4517 of 1982, the Recovery Applications No. 1297/80 to 1301/80 are ordered to be transferred to the Tribunal constituted under the Gujarat Affiliated Colleges Services Tribunal Act, 1982. There shall not be no orders as to costs. Rule made absolute accordingly.

16. Rule is made absolute in Civil Revision Application No.821 of 1983, with no orders as to costs. The impugned judgment and order dated 25th January, 1983 passed below application ex.44, by learned Civil Judge(Senior Division), Bhavnagar are hereby quashed and the application ex. 45 stands granted.

17. Appeal From Order No.330 of 1984 is dismissed with no orders as to cost.
